

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

FEB 24 2003

Federal Communications Commission

In the Matter of
FAMILY BROADCASTING, INC.) EB Docket No. 01-39

Order to Show Cause Why the Licenses for)
Stations WSTX(AM) and WSTX-FM,)
Christiansted, U.S. Virgin Islands,)
Should Not Be Revoked)

TO: Honorable Richard L. Sippel
Administrative Law Judge

PETITION FOR EXTRAORDINARY RELIEF

Family Broadcasting, Inc. ("Family"), by its attorney, hereby respectfully requests the Administrative Law Judge to issue an order, suspending the hearing in this proceeding for a sufficient amount of time to allow Family to pursue a distress sale of Stations WSTX AM and FM to Caledonia Communication Corporation ("Caledonia"). In support thereof, it is alleged:

1. The Commission has a distress sale policy. That policy permits a licensee whose basic qualifications have been challenged by the Commission, and whose license is therefore in danger of being revoked or not renewed, to assign the license to a minority-controlled entity prior to the commencement of a hearing. The proposed assignee must be basically qualified, must meet the Commission's definition of a "minority controlled entity", and the sale must be for no more than 75% of the station's fair market value, as determined by averaging appraisals obtained by the assignor and the assignee. See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849,855(1982); Statement of Policy on Minority Ownership

of Broadcasting Facilities, 68 FCC 2d 979,983 (1978); see also, Tuscola Broadcasting Co., 47 RR 2d 587 (1980).

2. Family has entered into an Asset Purchase Agreement which provides for the sale of Stations WSTX AM and FM to Caledonia Communication Corporation (“Caledonia”). A copy of the Asset Purchase Agreement between Family and Caledonia is submitted herewith as Exhibit A. The principals of Caledonia have advised Family that the corporation qualifies as a minority-controlled entity for purposes of the distress sale policy, and Caledonia’s President has provided a declaration to that effect at Exhibit B hereto. Family will withdraw the pending application for transfer of control of Family and file a new application for assignment of the licenses of Stations WSTX AM and FM to Caledonia. That will be accomplished by the end of the week. The distress sale policy requires that the sale price be established at no more than 75% of the stations’ fair market value, as determined by averaging appraisals obtained by the seller and the buyer. In this case Family’s appraiser, Robert Connelly appraised Stations WSTX AM and FM at a price of \$395,000. George Reed, acting as the appraiser for the buyer, arrived at a price of \$380,000. Copies of the Connelly and Reed appraisals are attached and marked Exhibits C and D, respectively. The sale price has been set at \$290,625, which is an amount equal to no more than 75% of the average of the two appraisals. Thus, the proposed assignment of the WSTX AM and FM licenses to Caledonia is fully consistent with all of the requirements of the distress sale policy.

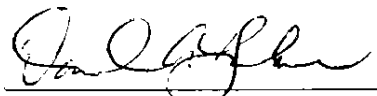
3. That policy, however, requires that the sale take place prior to a hearing. Thus, if the policy is to be applied, the hearing scheduled for February 25, 2003, must be postponed.

4. Family respectfully requests such postponement for a period of time sufficient for **the** Commission to process and act upon the application for assignment of the WSTX ~~Ah4~~ and FM licenses **to** Caledonia.

February 24, 2003

Respectfully submitted,

FAMILY BROADCASTING, INC.

By: 
Daniel A. Huber
Its Attorney

560 N Street, S.W.
Washington, D.C. 20024
202-488-4505

EXHIBIT A

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of February __, 2003, between Family Broadcasting, Inc., a U.S. Virgin Islands corporation ("**Seller**") and Caledonia Communication Corporation, a U.S. Virgin Islands corporation ("**Buyer**").

WHEREAS, Seller owns radio Stations WSTX and WSTX-FM, Christiansted, Virgin Islands (the "**Stations**"), and is the holder of the broadcast licenses, authorizations and/or construction permits relating to the Stations (collectively referred to as the "**FCC Licenses**") issued by the Federal Communications Commission ("**FCC**"); and

WHEREAS, Buyer and Seller have agreed that Seller shall sell and assign and Buyer shall purchase and acquire the Stations and the FCC Licenses on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements and covenants contained herein, the parties, intending to be bound legally, agree as follows:

Section 1 Definitions

Unless otherwise stated in this Agreement, the following terms have the following meanings:

1.1 Accounts Receivable or Receivables means the rights of Seller to payment for advertising broadcast by the Stations, but only with respect to Seller's rights to such payments which, as of the Closing Date, will have been due and owing to Seller for no longer than 90 days.

1.2 The Act means the Communications Act of 1934, as amended.

1.3 Assumed Contracts means (i) all Contracts that Buyer has agreed to assume as of the Closing Date, which are listed in Schedule 3.11, and (ii) any Contracts entered into by Seller between the date of this Agreement and the Closing Date that Buyer agrees in writing to assume.]

1.4 Closing has the meaning specified in **Section 10.1** hereof.

1.5 Closing Date has the meaning specified in **Section 10.1** hereof.

1.6 Consents means all consents, approval or permits of governmental authorities and other third parties necessary to transfer the Stations Assets to Buyer or otherwise to consummate the transactions contemplated by this Agreement, which are listed on **Schedule 3.3**.

1.7 Contracts means all contracts, leases, licenses, and other agreements, written or oral, including any amendments and other modifications thereto, to which Seller is a

party or which are binding upon Seller and which relate to or affect the Stations Assets or the business or operation of the Stations, and (i) which are effective on the date of this Agreement or (ii) which are entered into by Seller between the date hereof and the Closing Date.

1.8 Environmental Laws means all applicable federal, Territorial or local environmental law, statute, ordinance, order, rule or regulation relating to the environment or to the health and safety of humans.

1.9 FCC has the meaning specified in the first recital above.

1.10 FCC Consent means the action of the FCC granting its consent to the assignment of the FCC Licenses as contemplated by this Agreement.

1.11 FCC Licenses has the meaning specified in the first recital above

1.12 Final Order means a written action or order issued by the FCC (a) which has not been reversed, stayed, enjoined, set aside, annulled or suspended, and (b) with respect to which (i) no requests have been tiled for administrative or judicial review, reconsideration, appeal or stay and the periods provided by statute or FCC regulations for filing any such requests and for the FCC to set aside the action on its own motion have expired, or (ii) in the event of review, reconsideration or appeal, the FCC upholds the action and the period provided by statute or FCC regulations for further review, reconsideration or appeal has expired.

1.13 Intangible Assets means all intangible assets of Seller relating to the Stations, including the goodwill of the Stations, customer lists, sales and operating business plans, worldwide website(s) of the Stations, universal resource locator ("URL") of the Stations, proprietary information, technical information and data, machinery and equipment warranties, Seller's right, title and interest in and to the call signs WSTX and WSTX-FM and any intellectual property of Seller relating to the Stations such as copyrights, trademarks, trade names, service marks, service names, licenses, patents, permits, jingles, slogans and logos and other similar intangible property rights and interests applied for, issued to or owned by Seller by registration with a governmental authority or by common law, or under which Seller is licensed or franchised and which are used or useful in the business or operations of the Stations, and which are listed on **Schedule 3.20** together with any additions thereto between the date of this Agreement and the Closing Date.

1.14 Licenses means all licenses, permits and other authorizations issued by any federal, territorial or local governmental authorities to Seller in connection with the business or operations of the Stations, together with any additions thereto between the date of this Agreement and the Closing Date and which are listed on **Schedule 3.5**.

1.15 Liens means all mortgages, trusts, liens (statutory or otherwise), security interests, claims, pledges, licenses, equities, options, conditional sales contracts, assessments, levies, easements, covenants, reservation, restrictions, rights of way, exceptions, limitations, charges or encumbrances of any nature whatsoever.

1.16 Purchase Price has the meaning specified in **Section 2.3** hereof

1.17 Schedule(s) means the Schedule(s) to be provided by Seller to Buyer and attached hereto within seven (7) days from the date hereof.

1.18 Stations Assets has the meaning specified in the last paragraph of **Section 2.1** hereof.

1.19 Stations Employees means employees of Seller who work in the business and operation of the Stations.

1.20 Tangible Personal Property means all equipment, machinery, tools, vehicles, furniture, office equipment, inventory, spare parts, and other personal property which are used in the business or operation of the Stations and which are listed on **Schedule 3.6**, together with any additions thereto between the date hereof and the Closing Date, and less any retirements or dispositions thereof arising in the ordinary course of business between the date hereof and the Closing date.

Section 2 **Purchase and Sale of Assets**

2.1 Assets to be Sold. Subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to sell, transfer and deliver to Buyer on the Closing Date, and Buyer agrees to purchase from Seller, the following:

- (a) All Licenses, including the FCC Licenses;
- (b) The Tangible Personal Property;
- (c) The Assumed Contracts;
- (d) All books, files (including, without limitation, the Stations' public inspection files), records, and logs relating to the business or operations of the Stations, [including executed copies of the Assumed Contracts], subject to the right of Seller to have such books and records made available to Seller for a reasonable period, not to exceed three (3) years after the Closing Date; and
- (e) The Intangible Assets

All of the above described assets to be transferred to Buyer hereunder (collectively, the "Stations Assets") shall be transferred to Buyer free and clear of all debts, Liens, or other liabilities whatsoever.

2.2 Excluded Assets. The Stations Assets shall not include the following assets:

- (a) Seller's cash on hand, bank deposits, insurance policies, or other similar items; and any stocks, bonds, certificates of deposit and similar investments;

- (b) Seller's business name, including any rights to the name "Family Broadcasting, Inc.", any books and records which Seller is required by law to retain, all records relating to the excluded assets described in this Section 2.2 and to Seller's accounts payable and general ledger records, each subject to the right of Buyer to have access to and to copy that portion of such records which relate to the Stations for a period of three years prior to the Closing Date, and Seller's books and records relating to Seller's internal limited liability company matters and financial relationships with Seller's lenders;
- (c) Computer software which is leased to or licensed by Seller;
- (d) Any pension, profit-sharing plan, or employee benefits plans;
- (e) Any claims, rights and interest in and to any refunds of federal, territorial or local franchise, income or other taxes or fees of any nature whatsoever for periods prior to the Closing Date; and
- (f) **All** assets of Seller not used in the business and/or operation of the Stations

2.3 Purchase Price; Payment The price to be paid by Buyer for the Stations Assets shall be Two Hundred Ninety Thousand, Six Hundred Twenty-Five Dollars (\$290,625.00), which amount is equal to no more than seventy-five percent (75%) of the fair market value of the Stations as determined by separate professional appraisals provided by George Reed of Media Services Group, Inc. and Robert J. Connelly of the Connelly Company. The Purchase Price shall be subject to adjustments as set forth in **Section 2.4** below.

2.4 Adjustments and Prorations. (a) The Purchase Price shall be increased or decreased as required to effectuate the proration of expenses arising from the operation of the Stations, including, but not limited to, utility charges, personal property taxes and assessments levied against the Stations Assets, property and equipment rentals, sales and service charges, taxes (except for taxes arising by reason of the transfer of the Stations Assets as contemplated hereby, which shall be paid as set forth in **Section 11.1** of this Agreement), FCC regulatory fees and similar prepaid and deferred items. Such expenses shall be prorated between Buyer and Seller in accordance with the principle that Seller shall be responsible for all expenses, costs and liabilities allocable to the period prior to the Closing Date, and Buyer shall be responsible for all expenses, costs and obligations allocable to the period on and after the Closing Date. There **shall** be no adjustment for, and Seller shall remain solely liable with respect to, any Contracts **[not included in the Assumed Contracts]** and any other obligation or liability not being assumed by Buyer in accordance with Section 2.8 hereof.

(b) Any adjustments will, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment by the appropriate party occurring no later than thirty (30) days after the Closing Date or such other date as the parties shall mutually agree upon. In the event of a dispute between Seller and Buyer regarding adjustments or prorations which cannot be resolved by Seller's and Buyer's good faith negotiations, then Seller and Buyer shall together choose an independent firm of public accountants (the "**Accounting Firm**") to

resolve the dispute. The Accounting Firm's resolution of the dispute shall be final and binding, and all fees and expenses of the Accounting Firm shall be borne equally by Buyer and Seller.

2.5 Allocation. The parties will use best efforts to agree upon the allocation of the Purchase Price to the Stations Assets within 45 days of the date hereof and no later than the Closing Date.

2.6 Assumption of Liabilities and Obligations. As of the Closing Date, Buyer shall assume and undertake to pay, discharge and perform **all** obligations and liabilities of Seller under the Licenses and the Assumed Contracts insofar as they relate to the time period on and after Closing Date or arise out of events occurring on and after the Closing Date. Buyer shall not assume any other obligations or liabilities of Seller including (i) any obligations or liabilities under any Contract not included in the Assumed Contracts, (ii) any obligations or liabilities under the Assumed Contracts relating to the period prior to the Closing Date, (iii) any claims or pending litigation or proceeding relating to the operation of the Stations prior to the Closing, (iv) any obligations or liabilities of Seller arising under capitalized leases or financing agreements, (v) any obligations or liabilities of Seller under any employee pension, retirement, health and welfare or other benefit plans or collective bargaining agreements, or (vi) any obligation to any employee of Seller for severance benefits, vacation time or sick leave accrued prior to the Closing Date, and all such obligations and liabilities shall remain and be the obligations and liabilities solely of Seller.

Section 3

Seller's Representations and Warranties

Seller represents and warrants to Buyer as follows:

3.1 Organization and Standing. Seller is a corporation duly organized, validly existing and in good standing under the laws of the U.S. Virgin Islands. Seller has all requisite power and authority (i) to own, lease and use the Stations Assets as now owned, leased and used, (ii) to conduct the business and operations of the Stations as now conducted, (iii) to execute and deliver this Agreement and the documents contemplated hereby, and to perform and comply with all of the terms, covenants and conditions to be performed and complied with by Seller hereunder. Seller is not a participant in any joint venture or partnership with any other person or entity with respect to any part of the operation of the Stations or any of the Stations Assets.

3.2 Authorization and Binding Obligation. The execution, delivery and performance of this Agreement by Seller have been duly and validly approved and authorized by resolution(s) of a super majority (at least 66-2/3%) of the shareholders and directors of Seller. This Agreement has been duly signed and delivered by Seller and constitutes the legal, valid and **binding** obligations of Seller, enforceable against it in accordance with its terms, **except as the** enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, and by judicial discretion in the enforcement of equitable remedies.

3.3 Absence of Conflicting Agreements. Subject to obtaining the Consents listed at **Schedule 3.3**, Seller's execution, delivery and performance of this Agreement and the

documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of any third party; (ii) will not violate any provision of its articles of incorporation or by-laws; (iii) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation, ordinance or ruling of any court or governmental authority applicable to Seller; (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license or permit, to which Seller is a party or by which Seller may be bound; and (v) will not create any claim, liability, mortgage, lien, pledge, condition, charge or encumbrance of any nature whatsoever upon any of the Stations Assets.

3.4 Litigation. Except for (i) the FCC hearing proceeding in EB Docket No. 01-39 pertaining to the FCC Licenses, and (ii) rulemaking proceedings generally affecting the broadcasting industry, there is no application, complaint, litigation, proceeding or investigation pending or, to Seller's knowledge, threatened against Seller or either of the Stations in any federal, state or local court, or before any administrative agency (including, without limitation, any FCC or other governmental proceeding) which may reasonably be expected to have a material adverse effect upon the business, property, assets or condition (financial or otherwise) of the Stations, or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement.

3.5 Licenses. **Schedule 3.5** is a true and complete list of Licenses and their expiration dates. Seller has delivered to Buyer true and complete copies of the Licenses (including any amendments and other modifications thereto). The Licenses have been validly issued and Seller is the legal holder thereof. The Licenses listed on **Schedule 3.5** comprise all of the licenses, permits and other authorizations required from any governmental or regulatory authority for the lawful conduct of the business and operations of the Stations in the manner and to the full extent they are now conducted. None of the Licenses is subject to any restriction or condition that would limit the full operation of the Stations as now operated. The Licenses are in full force and effect.

3.6 Tangible Personal Property. **Schedule 3.6** lists all material items of Tangible Personal Property. The Tangible Personal Property listed in **Schedule 3.6** comprises all items of tangible personal property necessary to conduct the business and operations of the Stations as now conducted.

3.7 Title to Stations Assets, Seller does not lease any equipment in the operation of the Stations. Seller has good and marketable title to all Stations Assets, free and clear of Liens except those described in **Schedule 3.7**. None of the Stations Assets are subject to any restrictions with respect to the transferability thereof, except for the Consents. Subject to obtaining the Consents, Seller has complete and unrestricted power and right to sell, assign, convey and deliver the Stations Assets to Buyer as contemplated hereby. At Closing, Buyer will receive good and marketable title to all Stations Assets, free and clear of all Liens of any nature whatsoever. Seller has no knowledge of any circumstances, conditions, events or arrangements which may hereafter give rise to any liabilities on the part of any successor to the business of Seller in connection with the Stations, except in the ordinary course of business.

3.8 Condition of Stations Assets. All Stations Assets, including all broadcast equipment located at the Stations' transmitter site and studios, are in good operating condition and repair, free from any defects (except minor defects that do not interfere with the use thereof in the conduct of the normal operations of the Stations), have been maintained consistent with the standards generally followed in the broadcast industry and are sufficient to carry on the business of the Stations as conducted during the preceding 12 months. To Seller's knowledge, all components of the buildings and other structures owned or otherwise utilized by the Seller are in good condition and repair and have no structural defects, water damage or leakage, or defects affecting the plumbing, electric power, telephone service, sewage and waste disposal facilities, or heating, ventilating or air conditioning systems. Seller's use and operation of the Stations from the Stations' studio site and transmitter sites is not in violation of any law, statute, ordinance, rule or regulation of any government, governmental body, agency or authority (federal, territorial or local). Notwithstanding anything in this Section to the contrary, Buyer understands and accepts that both Stations are currently operating under Special Temporary Authorities granted by the FCC; that Station WSTX- FM is operating at a different site from the one specified in its license, using a low power exciter and temporary antenna; and that Station WSTX is using a long wire antenna.

3.9 Environmental Matters. Except as listed and described on **Schedule 3.9**, all activities of the Stations or of Seller with respect to the Stations, at or upon the studio site and the transmitter site of each of the Stations have been and are being conducted in compliance with Environmental Laws. To Seller's knowledge, no hazardous substance nor any petroleum products as defined in Environmental Laws, is present in any medium in the operations of the Stations in such a manner as may require remediation under any applicable law. Except as listed and described on **Schedule 3.9**, no polychlorinated biphenyls ("PCBs") or substances containing PCBs, nor any asbestos or materials containing asbestos are present in the structures or equipment utilized by Seller and any such PCBs or asbestos previously present in or on such property have been removed and disposed of in accordance with all Environmental Laws. Seller has not been notified by any governmental authority of any violation by Seller or the Stations of any Environmental Law and to Seller's knowledge, no unresolved claims have been made to the contrary. The operation of the Stations is in compliance in all material respects with current standards of the American National Standards Institute ("ANSI") required to be met under applicable FCC rules and regulations.

3.10 Assumed Contracts. Schedule 3.10 is a true and complete list of all Assumed Contracts. Seller has delivered true and complete copies of all Assumed Contracts. All of the Assumed Contracts are in full force and effect and are valid, binding and enforceable against Seller and, to the knowledge of Seller, the other parties thereto, in accordance with their terms except as their enforceability may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally, and by judicial discretion in the enforcement of equitable remedies. Seller is not in default under any Assumed Contract. Nor has Seller granted or been granted any material waiver or forbearance with respect to any Assumed Contract. No event or omission has occurred which through the passage of time or the giving of notice, or both, would constitute a default by Seller under any Assumed Contract or cause acceleration of any of Seller's obligations or result in the creation of any Lien on any of the Stations Assets. To Seller's knowledge, no third party is in default under any Assumed Contract nor has any event or omission occurred which, through the passage of time or the giving of notice, or both, would

constitute a default thereunder or give rise to an automatic termination, or the right of discretionary termination, thereof. Except for the need to obtain Consents to Assumed Contracts listed in Schedule 3.3, Seller has full legal power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement, and such assignment will not affect the validity, enforceability or continuation of any of the Assumed Contracts.

3.11 Financial Information. Seller has provided true and complete copies of the Stations' statement of operations and statement of cash flows, both for the year ending December 31, 2002 (collectively, the "Financial Statements"). To Seller's knowledge, all of such Financial Statements have been prepared in accordance with Seller's books and records, and fairly present the assets, liabilities and financial position, the results of operations and cash flows of Seller as of the date and for the year and period indicated.

3.12 Absence of Undisclosed Liabilities. Except as and to the extent specifically disclosed in the Financial Statements, Seller does not have any liabilities other than commercial liabilities and obligations incurred in the ordinary course of business and consistent with past practice and none of which has or will have a material adverse effect on the business, financial conditions or results of operation of the Stations by Buyer after the Closing.

3.13 Taxes. Except as set forth in Schedule 3.13, (i) all federal tax returns required to have been filed by or on behalf of Seller and all tax returns required to be filed by or on behalf of Seller in the U.S. Virgin Islands or any political subdivision thereof, have been timely filed and the taxes paid or adequately accrued; (ii) Seller has duly withheld and paid all taxes which it is required to withhold and pay relating to salaries and other compensation heretofore paid to employees of the Stations; and (iii) Seller has not received any notice of underpayment of taxes or other deficiency which has not been paid and there are no outstanding agreements or waivers extending the statutory period of limitations applicable to any tax return or report filed by Seller. To Seller's knowledge, there are no governmental investigations or other legal, administrative, or tax proceedings pursuant to which Seller is or could be made liable for any taxes, penalties, interest, or other charges, the liability for which could extend to Buyer as transferee of the business of the Stations, and to Seller's knowledge, no event has occurred that could impose on Buyer any transferee liability for any taxes, penalties or interest due or to become due from Seller.

3.14 Station Employees. Schedule 3.14 contains a true and complete list of all Station Employees, Seller has delivered to Buyer true and complete copies of all employment agreements for the Station Employees listed on Schedule 3.14.

3.15 Compliance With Laws. The Stations are operating in compliance in all material respects with the Licenses, the Act, and the current rules and regulations of the FCC. Seller and the Stations have complied and remain in compliance in all material respects with all other federal, territorial and local laws, rules, regulations and ordinances applicable or relating to the ownership, business and operations of the Stations, and, except with respect to the pending license revocation proceeding (EB Docket No. 01-39) before the FCC, Seller has received no notice or other communication from any governmental authority indicating that Seller is not in compliance in all material respects with all requirements of the FCC, the Act or applicable state and local laws, rules, regulations and ordinances. Seller is not in default with respect to any

judgment, order, injunction or decree of any court, administrative agency, or other governmental authority in any respect material to the transactions contemplated hereby.

3.16 Reports, Fees and Local Public File. All reports, returns and statements of a material nature currently required to be filed by Seller with the FCC or with any other governmental agency have been filed, and all reporting requirements of the FCC and other governmental authorities having jurisdiction over Seller have been complied with in all material respects. All of such returns, reports and statements are substantially complete and correct as filed. Seller has paid to the FCC all annual regulatory fees payable with respect to the FCC Licenses required to be paid by Seller. The Stations' public inspection files are maintained by Seller in compliance with FCC rules, and will be complete and up-to-date on the Closing Date.

3.17 Promotional Rights. The Intangible Property includes all call signs, trade names, slogans, servicemarks, service names, commercials, and other similar intangible property rights used or useable to promote or identify the Stations, all of which are in good standing and uncontested and are listed on **Schedule 3.17**. Seller has no knowledge of any infringement or unlawful or unauthorized use of those promotional rights, including without limitation the use of any call sign, slogan or logo by any broadcast Stations or cable system in the U.S. Virgin Islands, that may be confusingly similar to the call signs, slogans, and logos currently used by the Stations.

3.18 Absence of Certain Changes. Except as and to the extent set forth in **Schedule 3.18** since February 23, 2003, there has not been: (a) any material adverse change in the financial condition, Stations Assets, prospects or operations of the Stations; (b) any material loss, damage or destruction, whether covered by insurance or not, affecting the Stations or the Stations Assets; (c) except in the ordinary course, any increase in the compensation, salaries or wages payable or to become payable to any employee of Seller who is employed at the Stations (including, without limitation, any increase or change pursuant to any bonus, pension, profit sharing, retirement or other plan or commitment), or any bonus or other employee benefit granted, made or accrued; (d) any Lien made on any of the properties or assets of Seller that are Stations Assets; (e) except in the ordinary course, any sale, lease or other transfer of disposition of any properties or assets of Seller that are Stations Assets (or that would have been Stations Assets had no such disposition occurred); (f) any entering into, amendment or termination by Seller of any contract, or any waiver of material rights thereunder, other than in the ordinary course of business; (g) any commitment or transaction by Seller in connection with or affecting the Stations (including, without limitation, any borrowing or capital expenditure) other than in the ordinary course of business consistent with past practice; or (h) any other event or condition not in the ordinary course of business of Seller.

3.19 Broker. Neither Seller nor any person acting on Seller's behalf has incurred any liability for any finders' or brokers' fees or commissions in connection with the transactions contemplated by this Agreement.

3.20 Disclosure. No representation or warranty made by Seller in this Agreement and no statement made by or on behalf of Seller in any certificate, document, Instrument, exhibit or schedule delivered or to be delivered by Seller pursuant hereto contains or

will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make such representation or warranty or such statement not misleading.

Section 4 Buyer's Representations and Warranties

Buyer represents and warrants to Seller as follows:

4.1 Organization and Standing. Buyer is a corporation, duly organized, validly existing and in good standing under the laws of the U.S. Virgin Islands. Buyer has all requisite corpower and authority to execute and deliver this Agreement and the documents contemplated hereby, and to perform and comply with all of the terms, covenants and conditions to be performed and complied with by Buyer hereunder.

4.2 Authorization and Binding Obligation. The execution, delivery and performance of this Agreement by Buyer has been duly and validly authorized by all necessary corporate action on its part. This Agreement has been duly signed and delivered by Buyer and constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms, except as the enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by judicial discretion on the enforcement of equitable remedies.

4.3 Absence of Conflicting Agreements. Subject to obtaining the FCC Consent, Buyer's execution, delivery and performance of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of any third party; (ii) will not violate any provision of the articles of incorporation or by-laws of Buyer; (iii) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation, ordinance or ruling of any court or governmental authority; and (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license or permit, to which Buyer is a party or by which Buyer may be bound, such that (with respect to this clause(iv) only) Buyer could not acquire or operate the Stations Assets.

4.4 Licensee Qualifications. To Buyer's knowledge, there is no fact that would, under the Act and the rules, regulations and published policies of the FCC, each as in effect on the date of this Agreement, disqualify Buyer from being the Licensee of the Stations.

4.5 Broker. Buyer is not responsible for, nor has any person acting on Buyer's behalf incurred any liability for, any finders' or brokers' fees or commissions in connection with the transactions contemplated by this Agreement.

4.6 Absence of Litigation. There is no litigation, proceeding or investigation pending or, to Buyer's knowledge, threatened against it in any federal, territorial or local court or before any administrative agency or arbitrator, or before any other tribunal duly authorized to resolve disputes, and which seeks to enjoin or to prohibit or otherwise to question the validity of any action taken or to be taken by Buyer pursuant to or in connection with this Agreement.

4.7 Disclosure. No representation or warranty made by Buyer in this Agreement and no statement made by or on behalf of Buyer in any certificate, document, instrument, exhibit or schedule delivered or to be delivered by Buyer pursuant hereto contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading.

Section 5

Covenants of Seller

5.1 Affirmative Covenants. Between the date hereof and the Closing Date, except as contemplated by this Agreement or with the prior written consent of Buyer, Seller shall:

- (a) Conduct the business and operations of the Stations in the ordinary course, in accordance with its past practices and in accordance with other covenants in this Section 5;
- (b) Afford to Buyer and its counsel, accountants, engineers and other authorized representatives reasonable access during normal business hours to the Stations Assets and to the books and records relating thereto, and furnish or cause to be furnished to Buyer and its authorized representatives all information relating to the Stations Assets as they may reasonably request. No inspection or investigation made by or on behalf of Buyer, or Buyer's failure to make any inspection or investigation, shall affect Seller's representations, warranties and covenants hereunder or be deemed to constitute a waiver of any of those representations, warranties and covenants;
- (c) Maintain all of the Stations Assets in good condition, wear and tear excepted, and to use, operate and maintain all Stations Assets in a reasonable manner and in accordance with the terms of the FCC Licenses, all rules and regulations of the FCC and generally accepted standards of good engineering practice;
- (d) Diligently maintain its books and records relating to the Stations;
- (e) Conduct the business of the Stations in accordance with the Act, all applicable FCC rules and regulations, and any other applicable federal, state or local rules and regulations, in all material respects. Upon receipt of notice of violation of any such laws, rules and regulations, Seller will promptly notify Buyer of such notice and shall use all commercially reasonable efforts to cure such violation prior to the Closing Date;
- (f) Promptly notify Buyer in writing in the event Seller becomes aware of: (i) any litigation or administrative proceeding pending or threatened against Seller which challenges the transactions contemplated hereby; (ii) any material developments with respect to the business or operations of the Stations; or (iii) any substantial damage to or destruction of any material Stations Asset;

- (g) Obtain the Consents without any change in the terms or conditions of any Assumed Contract or License that could be less advantageous to the Stations than those pertaining under the Assumed Contract or License on the date of this Agreement. Seller shall promptly advise Buyer of any difficulties experienced in obtaining any of the Consents and of any conditions proposed, considered, or requested for any of the Consents; and,
- (h) Remove any PCBs that may be present at the transmitter site of either of the Stations.

5.2 Negative Covenants. Between the date hereof and the Closing Date, except as contemplated by this Agreement or with the prior written consent of Buyer, Seller shall not:

- (a) Amend, modify or terminate any of the Assumed Contracts;
- (b) Create, assume or permit to exist any Lien of any nature whatsoever upon any of the Stations Assets, except for (a) Liens disclosed in **Schedule 3.7** which shall be removed prior to the Closing Date, and (b) other Liens which shall be removed prior to the Closing Date;
- (c) Sell, assign, lease or otherwise transfer or dispose of any of the Stations Assets, except in the ordinary course of Seller's business and in connection with the acquisition of replacement property of equivalent kind and value;
- (d) Waive any material right relating to the Stations or the Stations Assets;
- (e) (i) Cause or permit, by any act or omission, the FCC Licenses to expire or be surrendered or modified, or take any action which would cause the FCC or any other governmental authority to suspend, revoke or adversely modify in any material respect any FCC Licenses; (ii) surrender, modify, forfeit or fail to seek renewal of, the FCC Licenses or cause the FCC or any other governmental authority to institute any proceedings for the cancellation or modification thereof; (iii) fail to prosecute with due diligence the issues pending before the FCC in EB Docket No. 01-39, any pending material application before the FCC or any other governmental authority relating to the Stations; or (iv) take any other action within its control which would cause the Stations to be noncompliant with any material requirements of the Act, any other applicable law, or any FCC or other governmental authority's rules and regulations material to the transactions contemplated by this Agreement; or
- (f) Take any other action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transactions contemplated by this Agreement.

Section 6

Covenants of Buyer

6.1 Pre-Closing Covenants. Between the date hereof and the Closing Date, Buyer shall:

- (a) File with the FCC all applications and other documents required to be filed by Buyer in connection with the transactions contemplated hereby and promptly furnish all such information as the FCC may request;
- (b) Refrain from knowingly doing any act that would disqualify Buyer from becoming the licensee of the Stations;
- (c) Refrain from taking any action designed to control, supervise or direct the business or operations of the Stations, including its programming, employees and policies, which remain the Seller's responsibility until the Closing;
- (d) Refrain from taking any action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transactions contemplated by this Agreement; and
- (e) Obtain a report prepared by a reputable company engaged in the business of conducting lien searches showing the results of searches of lien, tax, judgment, and litigation records pertaining to Seller and the Stations Assets.

6.2 Post-Closing Covenants. After the Closing Date, Buyer shall preserve the records of Seller which it has received from Seller for a period of three (3) years from the date of this Agreement and provide Seller and its agents reasonable access thereto.

6.3 Collection of Accounts Receivable. Buyer agrees for a period of ninety (90) days from the Closing Date (the "**Collection Period**") to act as agent for Seller for the collection of Accounts Receivable owing to Seller. Seller Shall furnish to Buyer at Closing a list of the Accounts Receivable and the amounts due. Buyer shall collect such Accounts Receivable without commission or compensation, and shall forward to Seller all amounts collected at intervals of approximately every thirty (30) days during the Collection Period. Buyer shall not, without consent of Seller, compromise or settle for less than full value any such Accounts Receivable. Buyer shall not incur any liability as a result of failure to collect the Accounts Receivable, but will exercise commercially reasonable efforts to collect same. Seller will not, without the written consent of Buyer, make any direct solicitation for payment of said receivables during the Collection Period. Any Accounts Receivable not collected during the Collection Period shall be delivered back to Seller. It is understand and agreed that during the Collection Period **all** moneys collected from advertisers indebted to **Seller shall first be applied,** as provided herein, toward the payment of Accounts Receivable owing to Seller. **If** any such advertiser shall, in good faith, dispute the amount Seller claims is owed to it, Buyer shall promptly so notify Seller in writing and return such account to Seller, and Buyer shall have no further responsibility for collection for such account. Upon notification and return to Seller of any account as herein provided, Buyer thereafter may deal with such advertiser as if it were not indebted to Seller and without the obligation of applying funds subsequently received from such

advertiser to the account of Seller. All payments by Buyer to Seller pursuant hereto shall be the gross amounts collected; payment of agency and sales commissions respecting the same shall be the responsibility of Seller.

Section 7

Special Covenants of Buyer and Seller

Buyer and Seller each agree as follows:

7.1 FCC Consent. The assignment of the FCC Licenses in connection with the purchase and sale of the Stations Assets shall be subject to the prior Consent of the FCC, which Consent shall have become a Final Order. At the direction of the presiding administrative law judge in EB Docket No. 01 -39 or other member of the FCC staff, the parties shall promptly prepare and file an appropriate application for FCC Consent. The parties shall prosecute said application with all reasonable diligence and otherwise use their reasonable best efforts to obtain a grant of the application as expeditiously as practicable and shall oppose any objections to the grant ~~of~~ the application for FCC Consent. Each party agrees to comply with any condition imposed on it by the FCC Consent. If the Closing shall not have occurred within the original period of the FCC Consent, and neither party shall have terminated this Agreement, the parties shall jointly request an extension of the effective period of the FCC Consent, provided that no extension of the FCC Consent shall limit the exercise by either party of its rights to terminate this Agreement under Section 14.

7.2 Bulk Sales Law. Buyer hereby waives compliance by Seller with the provision of the U.S. Virgin Islands Bulk Sales Law, if applicable, and Seller warrants and agrees to pay and discharge when due all claims of creditors which could be asserted against Buyer by reason of such noncompliance to the extent that any such liabilities arise before the Closing, and agrees to protect, defend, hold harmless and indemnify Buyer from and against any and all claims and demands that may arise on or after the Closing Date pursuant to the procedures set forth in Section 16 hereof.

7.3 Confidentiality. Except as may be required by a court order, governmental investigation or regulation, Buyer and Seller each shall keep confidential all information obtained by it with respect to the other in connection with this Agreement, and if the transactions contemplated hereby are not consummated for any reason, each shall return to the other, without retaining a copy thereof, any schedules, documents or other written information obtained from the other in connection with this Agreement and the transactions contemplated hereby.

7.4 Cooperation. The parties hereto shall cooperate fully with each other in fulfilling their respective obligations under this Agreement, including using their respective commercially reasonable best efforts to obtain the required Consents. Notwithstanding the foregoing, Seller and Buyer shall have no obligation (i) to expend funds to obtain any Consents except for the FCC Consent and Seller's obligation to cure any default of Seller under any

License [**or Assumed Contract**], or (ii) to agree to any adverse change in any License or Assumed Contract in order to obtain a Consent required with respect thereto.

7.5 Ensure Closing. Seller and Buyer each shall use its commercially reasonable best efforts to ensure that the transactions contemplated hereby shall be consummated in accordance with the terms of this Agreement.

7.6 Further Assurances. Seller and Buyer shall cooperate and take such actions, and execute such other documents, at Closing or subsequently, as may be reasonably requested by the other in order to carry out the provisions and purposes of this Agreement.

Section 8

Conditions Precedent to Buyer's Obligations

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any of which Buyer may waive in writing:

8.1 Representations, Warranties and Covenants. All representations and warranties of Seller made in this Agreement, or in any exhibit, schedule, certificate or other document delivered pursuant hereto, shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes Contemplated by this Agreement or changes that are not materially adverse and arise after the date hereof in the ordinary course of the business of the Stations. All of the terms, covenants and conditions to be complied with and performed by Seller on or prior to the Closing Date shall have been complied with or performed in all material respects.

8.2 FCC Consent. The FCC Consent shall have been granted.

8.3 Governmental Authorizations. Seller shall be the holder of all Licenses and there shall not have been any modification of any License that could have a material adverse effect on the Stations or the conduct of their business and operations. No proceeding shall be pending, the effect of which could be to revoke, cancel, fail to renew, suspend or modify materially and adversely any material Licenses or to deny the assignment thereof to Buyer.

8.4 Consents. All Consents for the Assumed Contracts listed on Schedule 3.3 shall have been obtained and delivered to Buyer without any adverse change in the terms or conditions of any Assumed Contract.

8.5 Authority to Operate from Current Studio and Transmitter Sites. Buyer shall have obtained from the owner of the Stations' studio and transmitter sites all necessary consents, leases or other authority for the continued operation of the Stations' facilities from such sites from and after the Closing Date,

8.6 No Material Adverse Change. Between the date of this Agreement and the Closing Date, there shall have been no material adverse change in the Tangible Personal Property, or Licenses of the Stations, including any damage, destruction, or loss affecting any

Stations Assets in any material respect. Between the date of this Agreement and the Closing Date, there shall have been no material adverse change in the cash flow of the Stations.

8.7 Deliveries. Seller shall have made or stand willing to make all the deliveries to Buyer set forth in Section 10.2 hereof.

8.8 Discharge of Liens. Seller shall discharge all Liens or other liabilities pertaining to the Stations Assets and shall provide Buyer with documentation thereof.

Section 9

Conditions Precedent to Seller's Obligations

The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any of which Seller may waive in writing:

9.1 Representations, Warranties and Covenants. All representations and warranties of Buyer made in this Agreement, or in any exhibit, schedule, certificate or other document delivered pursuant hereto, shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes contemplated by this Agreement. All of the terms, covenants and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects.

9.2 FCC Consent. The FCC Consent shall have been granted.

9.3 Deliveries. Buyer shall have made or stand willing to make all the deliveries set forth in Section 10.3 hereof.

Section 10

Closing and Closing Deliveries

10.1 Closing. The closing of the transaction contemplated herein (the "Closing") shall take place at the offices of Katten Muchin Zavis Rosenman located at 1025 Thomas Jefferson St., NW, Washington, D.C. at 10:00 a.m. on the tenth business day following that date on which the FCC Consent becomes a Final Order. Notwithstanding the foregoing, at Buyer's sole determination, the Closing may take place on any date between the date of the issuance of FCC Consent and the date on which the FCC Consent becomes a Final Order, so long as Buyer provides two weeks advance written notice of such earlier Closing Date to Seller.

10.2 Deliveries by Seller. Prior to or on the Closing Date, Seller shall deliver to Buyer the following, in form and substance reasonably satisfactory to Buyer and its counsel:

- (a) Transfer documents consisting of duly executed bills of sale, assignments and other transfer documents which shall be sufficient to vest good and marketable title to the Stations Assets in the name of Buyer, free and clear of all Liens and other liabilities;

- (b) An executed copy of any instrument evidencing receipt of any Consent;
- (c) A certificate dated as of the Closing Date executed on behalf of Seller by an officer of Seller, certifying (1) that the representations and warranties contained in this Agreement are true and complete in all material respects as of the Closing Date as though made on and as of that date; and (2) that Seller has in all material respects performed and complied with all of its obligations, covenants, and agreements set forth in this Agreement to be performed and complied with on or prior to the Closing Date;
- (d) Copies of all Licenses, Assumed Contracts, engineering records, plans, projections, blueprints, and all files and records used by Seller in connection with the business and operations of the Stations;
- (e) A certified copy of resolutions of the shareholders and directors of Seller authorizing the transactions contemplated by this Agreement; and,
- (f) Such other instruments, documents and certificates of officers as reasonably may be requested by Buyer to consummate this Agreement and the transactions contemplated hereby.

10.3 Deliveries by Buyer. On the Closing Date, Buyer shall deliver to Seller the following:

- (a) The Purchase Price as adjusted pursuant to Section 2.4 and less the amount of legal fees owed by Seller to Seller's counsel, which amount shall be deducted from the Purchase Price and paid by Buyer to Seller's counsel pursuant to written instructions signed by Seller and Seller's counsel and delivered to Buyer at least two (2) business days prior to the Closing Date;
- (b) Assumption agreements, in form and substance reasonably satisfactory to Seller and its counsel, pursuant to which Buyer shall assume and undertake to perform Seller's obligations under the Licenses and Assumed Contracts insofar as they relate to the time on and after the Closing Date or arise out of events occurring on or after the Closing Date;
- (c) A certificate dated as of the Closing Date executed on behalf of Buyer by an officer of Buyer, certifying (1) that the representations and warranties contained in this Agreement are true and complete in all material respects as of the Closing Date as though made on and as of that date; and (2) that Buyer has in all material respects performed and complied with all of its obligations, covenants, and agreements set forth in this Agreement to be performed and complied with on or prior to the Closing Date; and
- (d) A certified copy of resolutions of the shareholders and directors of Buyer authorizing the transactions contemplated by this Agreement, which shall be supported by a certificate of incumbency and corporate ownership; and,

- (e) Such other instruments, documents and certificates of officers as reasonably may be requested by Seller to consummate this Agreement and the transactions contemplated hereby.

Section 11

Transfer Taxes, Fees and Expenses

11.1 Transfer Taxes. Seller and Buyer shall share equally the cost of any transfer taxes and recording fees assessed or levied in connection with the sale of the Stations Assets to Buyer. Except as otherwise expressly provided herein, all other expenses incurred in connection with this transaction shall be borne by the party incurring same.

11.2 Governmental Filing or Grant Fees. Any filing fees imposed by the FCC shall be paid by Buyer. Any filing fees or grant fees imposed by any other governmental authority, the consent of which is required to the transactions contemplated hereby, shall be borne by Seller.

Section 12

Risk of Loss

The risk of any loss, damage or destruction to any of the Stations Assets to be transferred hereunder from fire or other casualty shall be borne by the Seller at all times prior to the Closing. Upon the occurrence of any material loss or damage to any material property or assets to be transferred hereunder as a result of fire or other casualty prior to Closing, Seller shall promptly notify Buyer of same in writing, stating the extent of such loss or damage incurred, the cause thereof if known and the extent to which restoration, replacement and repair of the Stations Assets lost or destroyed will be reimbursed under any insurance policy with respect thereto. Seller shall promptly restore, replace or repair, if possible, any lost or destroyed Stations Assets prior to the Closing Date, and Buyer and Seller agree that the Closing Date will be extended, if necessary, for a period of up to ninety (90) days to accomplish restoration, replacement or repair of the damaged or lost Stations Assets. If the Stations Assets have not been restored, replaced or repaired and the Stations' normal and usual transmission resumed within the ninety (90) - day period specified above, Buyer may terminate this Agreement forthwith without any further obligation hereunder by written notice to Seller. Alternatively, Buyer may, at its option, proceed to close this Agreement and complete the restoration and replacement of the Stations Assets at Buyer's expense after the Closing Date, in which event Seller promptly shall deliver to Buyer following receipt thereof all insurance proceeds received prior to or after the Closing in connection with such damage or destruction of the Stations Assets, or, if no such insurance proceeds are to be received by Seller, the Purchase Price shall be adjusted downward at the Closing. Notwithstanding the foregoing, Buyer may terminate this Agreement forthwith by written notice to Seller if (i) either of the Stations ceases signal transmission for a period of seven (7) consecutive days or (ii) either of the Stations fails to operate at its full, authorized power for a period in excess of ten (10) consecutive days.

Section 13 **Status of Employees**

13.1 Employment Relationship. Until the Closing Date, all Stations Employees remain the employees of the Seller and Seller shall have full authority and control over Stations Employees and their actions, and Buyer shall not assume the status of an employer or a joint employer of, or incur or be subject to any liability or obligation of an employer with respect to, any Stations Employees unless and until actually hired by Buyer. Seller shall be solely responsible for any and all liabilities and obligations Seller may have to Stations Employees, including without limitation compensation, severance pay, and accrued vacation time and sick leave.

13.2 Buyer's Right to Employ. Seller agrees that upon Closing, Buyer may extend an offer of employment to any Stations Employees. With Seller's consent, Buyer may communicate with Stations Employees concerning the possibility of their employment by Buyer after Closing, provided that such communication does not occur before the FCC Consent has issued.

Section 14 **Termination**

14.1 Termination by Seller. Seller may terminate this Agreement and abandon the sale of the Stations Assets if Seller is not then in material default hereof, upon written notice to Buyer, upon the occurrence of any of the following:

- (a) If the Closing shall not have occurred by the first anniversary of the filing of the application for FCC Consent;
- (b) If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree or order that would prevent or make unlawful the Closing;
- (c) If Buyer has failed to cure or commenced to cure any material breach of any of its representations, warranties or covenants under this Agreement within twenty (20) days after Buyer's receipt of written notice of such breach from Seller; or
- (d) If on the date that would otherwise be the Closing Date any of the conditions precedent to the obligations of Seller set forth in this Agreement have not been satisfied or waived in writing by Seller.

14.2 Termination by Buyer. In addition to Buyer's right to terminate this Agreement under Section 12 hereof, Buyer may terminate this Agreement and abandon the purchase of the Stations Assets if Buyer is not then in material default hereof, upon written notice to Seller, upon the occurrence of any of the following:

- (a) If the Closing shall not have occurred by the first anniversary of the filing of the application for FCC Consent;

- (b) If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree or order that would prevent or make unlawful the Closing;
- (c) If Seller has failed to cure or commenced to cure any material breach of any of its representations, warranties or covenants under this Agreement within twenty (20) days after Seller's receipt of written notice of such breach from Buyer; or
- (d) If on the date that would otherwise be the Closing Date any of the conditions precedent to the obligations of Buyer set forth in this Agreement, have not been satisfied or waived in writing by Buyer.

14.3 Rights on Termination. If this Agreement is terminated pursuant to 14.1(a) or (b) or 14.2 (a) or (b) and neither party is in material breach of any provision of this Agreement, neither party shall have any further liability with respect to the purchase and sale of the Stations Assets. If this Agreement is terminated by Buyer due to Seller's material breach of this Agreement, Buyer may sue at law for damages or, at its sole discretion, seek specific performance of this Agreement pursuant to the provisions of Section 18 hereof. If this Agreement is terminated by Seller because of Buyer's failure to close the transaction contemplated by this Agreement, Buyer shall pay Seller liquidated damages in an amount equal to Seller's reasonable and prudent, documented out-of-pocket expenses, including reasonable attorneys fees, incurred in connection with the negotiation of this Agreement and the filing of the application for FCC Consent referenced in Section 7.1, which amount shall constitute full payment and the exclusive remedy for any damages suffered by Seller by reason of Buyer's failure to close the transaction contemplated by this Agreement. Buyer and Seller agree in advance that Seller's actual damages in the event of Buyer's failure to close would be difficult to ascertain and that Buyer's reimbursement of Seller's costs as described in the foregoing sentence constitutes fair and equitable liquidated damages for said material breach by Buyer.

Section 15

Survival of Representations, Warranties and Covenants

All representations, warranties and covenants contained in this Agreement shall be deemed continuing representations, warranties and covenants and shall survive the Closing for a period of eighteen (18) months. Any investigations by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, or covenant contained in this Agreement. No notice or information delivered by Seller shall affect Buyer's right to rely on any representation or warranty made by Seller or relieve Seller of any obligations under this Agreement.

Section 16

Indemnification

16.1 Indemnification by Seller. Notwithstanding the Closing, and regardless of any investigation made at any time by or on behalf of Buyer or any information Buyer may have, Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any and all losses, costs, damages, liabilities, claims, actions, and expenses (including reasonable legal fees and other expenses incident thereto) of every kind, nature or description ("Damages"),

arising out of or in connection with: (a) the material breach of any representation or warranty of Seller set forth in this Agreement (including the Exhibits) or in any Schedule or certificate delivered to Buyer pursuant hereto; (b) the material nonfulfillment of any of Seller's covenants or other agreements contained in or arising out of this Agreement or the transactions contemplated hereby; (c) the failure of the parties to comply with the provisions of any bulk sales law applicable to the transfer of the Stations Assets; or (d) the operation or ownership of the Stations prior to the Closing, including any liabilities arising under the Licenses or the Assumed Contracts which relate to events occurring prior to the Closing Date.

16.2 Indemnification by Buyer. Notwithstanding the Closing, and regardless of any investigation made at any time by or on behalf of Seller or any information Seller may have, Buyer hereby agrees to indemnify, defend and hold Seller harmless from and against any and all Damages arising out of, or in connection with: (a) the material breach of any representation or warranty of Buyer set forth in this Agreement (including the Exhibits) or in any Schedule or certificate delivered to Seller pursuant hereto; (b) the material nonfulfillment of any of Buyer's covenants or other agreements contained in or arising out of this Agreement or the transactions contemplated hereby; or (c) the operation or ownership of the Stations on and after the Closing, including any liabilities arising under the Licenses or the Assumed Contracts which relate to events occurring after the Closing Date.

16.3 Procedure for Indemnification. The procedure for indemnification shall be as follows:

- (a) The party claiming indemnification (the "Claimant") shall promptly give written notice to the party from which indemnification is claimed (the "Indemnifying Party") of any claim, whether between the parties or brought by a third party, specifying in reasonable detail the factual basis for the claim. If the claim relates to an action, suit, or proceeding filed by a third party against Claimant, such notice shall be given by Claimant within seven (7) days after written notice of such action, suit, or proceeding was given to Claimant, or the claim shall be barred.
- (b) With respect to claims solely between the parties, following receipt of written notice from the Claimant of a claim, the Indemnifying Party shall have thirty (30) days to make such investigation of the claim as the Indemnifying Party deems necessary or desirable. For the purposes of such investigation, the Claimant agrees to make available to the Indemnifying Party and/or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree at or prior to the expiration of the thirty (30) day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Claimant the full amount of the claim. If the Claimant and the Indemnifying Party do not agree within the thirty- (30) day period (or any mutually agreed upon extension thereof), the Claimant may pursue available remedies pursuant to the provisions of Section 17.

- (c) With respect to any claim by a third party as to which the Claimant is entitled to indemnification under this Agreement, the Indemnifying Party shall have the right at its own expense, to participate in or assume control of the defense of such claim, and the Claimant shall cooperate fully with the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred by the Claimant as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of any third-party claim, the Claimant shall have the right to participate in the defense of such claim at its own expense. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any third party claim, it shall be bound by the results obtained by the Claimant with respect to such claim, *provided* however, that Claimant may not enter into any settlement of such a claim without the prior consent of the Indemnifying Party.
- (d) If a claim, whether between the parties or by a third party, requires immediate action, the parties will make every effort to reach a decision with respect thereto as expeditiously as possible.
- (e) The indemnification rights provided in this Section 16 shall extend to the members, managers, shareholders, directors, officers, employees and representatives of any Claimant although for the purposes of the procedures set forth in this Section 16 any indemnification claims by such parties shall be made by and through the Claimant.

16.4 Survival of Indemnification Rights. The indemnification rights provided in Section 16 shall expire eighteen (18) months following the Closing.

16.5 Exclusive Remedy. Except as provided in Sections 14.3 and 18.1 hereof, each party acknowledges and agrees that its sole and exclusive remedy with respect to any and all claims relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this Section 16.

Section 17 **Resolution of Disputes**

17.1 Arbitration. Any dispute, controversy or claim arising out of or relating to this Agreement or any agreement entered into pursuant hereto or the performance by the parties of the terms hereof or thereof shall be settled by binding arbitration held in Christiansted, St. Croix, U.S. Virgin Islands, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, except as otherwise provided in this Section 17. Notwithstanding the foregoing, Buyer may, in its discretion, apply to a court of competent jurisdiction for the decree of specific performance pursuant to Section 18.1.

17.2 Arbitrators. If the matter in controversy (exclusive of attorneys fees and expenses) appears, as at the time of the demand for arbitration, to exceed \$50,000, then the panel to be appointed shall consist of three neutral arbitrators; otherwise, one neutral arbitrator.

17.3 Procedures; No Appeal. The arbitrator(s) shall resolve the dispute as expeditiously as practicable, and if reasonably practicable, within 120 days of the selection of the arbitrator(s). The arbitrator(s) shall give the parties written notice of the decision, with the reasons therefor set out, and shall have 30 days thereafter to reconsider and modify such decision if any party so requests within 10 days after the decision. Thereafter, the decision of the arbitrator(s) shall be final, binding and nonappealable with respect to all persons, including persons who failed or refused to participate in the arbitration process.

17.4 Authority. The arbitrator(s) shall have authority to award relief under legal or equitable principles, including interim or preliminary relief.

17.5 Entry of Judgment. Judgment upon award rendered by the arbitrator(s) may be entered in any court having in personam and subject matter jurisdiction. Seller and Buyer hereby submit to the in personam jurisdiction of the Federal and Territorial Courts for the purpose of confirming any such award and entering judgment thereon.

17.6 Confidentiality. All proceedings under this Section 17, and all evidence given or discovered pursuant hereto, shall be maintained in confidence by all parties.

17.7 Continued Performance. The fact that the dispute resolution procedures specified in this Section 17 shall have been or may be invoked shall not excuse any party from performing its obligations under this Agreement and during the pendency of any such procedures all parties shall continue to perform their respective obligations in good faith, subject to any rights to terminate this Agreement that may be available to any party.

17.8 Tolling. All applicable statutes of limitation shall be tolled while the procedures specified in this Section 17 are pending. The parties will take such action, if any, required to effectuate such tolling.

Section 18 **Other Provisions**

18.1 Specific Performance. The parties recognize that if, prior to Closing, Seller breaches this Agreement and refuses to perform under the provisions hereof, monetary damages alone may not be adequate to compensate Buyer for its injury. Buyer shall therefore be entitled to obtain specific performance of the terms of this Agreement. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is adequate remedy at law.

18.2 Attorney Fees. Should either party default in the performance of any of the terms or conditions of this Agreement, which default results in arbitration for damages, specific performance, or other permitted remedy, the prevailing party in the arbitration shall be entitled to its reasonable legal fees and expenses.

18.3 Benefit and Binding Effect. Neither party hereto may assign this Agreement without the prior written consent of the other party hereto; provided, however, that Buyer may assign its rights and obligations under this Agreement to a subsidiary or commonly controlled affiliate of Buyer without seeking or obtaining Seller's prior approval, so long as

Buyer guarantees the obligations of such affiliate, and Seller shall be permitted to transfer the Stations Assets prior to the Closing Date to any entity under common control with Seller, so long as such entity agrees to be bound by the terms and conditions of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18.4 Governing Law. This Asset Purchase Agreement shall be governed, construed and enforced in accordance with the laws of the U.S. Virgin Islands, without regard to the choice of law provisions thereof.

18.5 Construction. The parties acknowledge and agree that this Agreement has been fully negotiated between them and shall not be interpreted or construed against the drafting party.

18.6 Notices. All notices, demands, requests or other communication required or permitted hereunder shall be in writing and sent by certified, express or registered mail, return receipt requested, postage prepaid, overnight air courier service, telecopier (fax) or personal delivery to the address specified below (or to such other address which a party shall specify to the other party in accordance herewith):

If to Seller: Family Broadcasting, Inc.
 P.O. Box Box 224469
 St. Croix, U.S. Virgin Islands 00882

with a copy to: Daniel Huber, Esquire
 560 N Street, S.W. Suite 501
 Washington, DC 20024
 Fax: 202-488-8520

If to Buyer: Caledonia Communication Corporation
 2111 Company Street, Suite 3
 St. Croix, U.S. Virgin Islands
 Fax: 340-773-7282

with a copy to: Shelley Sadowsky, Esquire
 Katten Muchin Zavis Rosenman
 1025 Thomas Jefferson St., NW
 East Lobby Suite 700
 Washington, DC 20007-5201
 Fax: 202-298-7570

Notice shall be **deemed** to have been given on the date of personal delivery, the date set forth in the records of the delivery service, or on the return receipt.

18.7 Multiple Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

18.8 Entire Agreement. This Agreement, the Schedules and Exhibits hereto, and all documents and certificates to be delivered by the parties pursuant hereto, collectively represent the entire understanding and agreement between Buyer and Seller with respect to the subject matter hereof. This Agreement supersedes all prior memoranda and agreements between the parties hereto, and may not be modified, supplemented or amended, except by a written instrument signed by each of the parties hereto designating specifically the terms and provisions so modified, supplemented or amended.

18.9 Captions. The section captions and headings in this Agreement are for convenience and reference purposes only and should not affect in any way the meaning or interpretation of this Agreement.

18.10 Exclusive Dealings. Prior to Closing, for so long as this Agreement remains in effect, neither Seller nor any person acting on Seller's behalf shall solicit or initiate any offer from, or conduct any negotiations with, any person concerning the acquisition of the Stations, directly or indirectly, by any party other than Buyer or Buyer's permitted assignees.

18.11 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (i) confer any rights or remedies on any person other than Seller, Buyer, and their respective successors and permitted assignees; (ii) to relieve or discharge the obligations or liability of any third party; or (iii) to give any third party any right of subrogation or action against either Seller or Buyer.

18.12 No Waiver. Unless otherwise specifically agreed in writing to the contrary: (i) the failure of either party at any time to require performance by the other of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (ii) no waiver by either party of any default by the other shall be taken or held to be a waiver by such party ~~of~~ any other preceding or subsequent default; and (iii) no extension of time granted by either party for the performance of any obligation or act by the other party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

18.13 Severability. If any covenant or provision hereof is determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared to be separate and distinct. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than overbreadth, the offending provision will be modified so as to maintain the essential benefits of the bargain between the parties hereto to the maximum extent possible, consistent with law and public policy.

The remainder ~~of~~ this page is intentionally left blank. The next page is the signature page.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

FAMILY BROADCASTING, INC.

By: Barbara James-Petersen
Name: Barbara James-Petersen
Title: President

Luz James
Luz James
Shareholder of Family Broadcasting, Inc.

Asta James
Asta James
Shareholder of Family Broadcasting, Inc.

CALEDONIA COMMUNICATION CORPORATION

By: _____
Name: Kevin A Rames
Title: President

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the **day** and year first above written.


FAMILY BROADCASTING, INC.

By: _____
Name: Barbara James-Petersen
Title: President

Luz James
Shareholder of **Family** Broadcasting, Inc.

Asta James
Shareholder of Family Broadcasting, Inc.

CALEDONIA COMMUNICATION CORPORATION


By: _____
Name: Kevin A. Ramos
Title: President